UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/003
Order No.: 008 (NY/2024)
Date: 24 January 2024
Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Isaac Endeley

JONES

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER

ON SUSPENSION OF ACTION PENDING MANAGEMENT EVALUATION

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Tiffany Henderson, UNOPS

Introduction

1. On 17 January 2024, the Applicant, a staff member at the G-6 level with the United Nations Office for Project Services ("UNOPS") in New York, filed an application requesting, under art. 2.2 of the Dispute Tribunal's Statute and art. 13 of its Rules of Procedure, the suspension, pending management evaluation, of the decision "to terminate [his] permanent appointment contract following the implementation of a Right-Sizing exercise".

2. By email of 17 January 2024, the Registry acknowledged receipt of the application, which was 28 pages long, and requested the Applicant to resubmit it in compliance with the page-limit requirement. The Applicant's resubmitted application was received on 18 January 2024 and served on the Respondent on the same day.

3. On 22 January 2024, the Respondent filed a reply contending that the application is without merit.

Factual background

4. On 31 October 2023, the Applicant received a letter from the Deputy Director of the People and Culture Group at UNOPS notifying him that his permanent appointment would be terminated at the close of business 31 January 2024. The letter referred to a meeting that took place on 30 October 2023 at which the Applicant was informed that "due to office restructuring requirements, the post of Portfolio Associate that [he is] currently encumbering will be abolished on 31 January 2024". The letter also informed the Applicant that if any suitable posts at the G-6 level "or below" become available with UNOPS in New York during the period leading up to his termination date, he would be alerted to see if he would like to be considered.

5. With the assistance of Counsel from the Office of Staff Legal Assistance ("OSLA"), the Applicant submitted a management evaluation request ("MER") on 29 December 2023 seeking a review of the decision to terminate his permanent

appointment. The MER remains pending before the Administrative Law Unit of UNOPS. It is worth noting that at the time of filing the MER, the Applicant also shared a draft copy of his "Application for suspension of action pending management evaluation", also dated 29 December 2023, and addressed to the Dispute Tribunal.

6. The present application for suspension of action was subsequently filed on 17 January 2024.

Considerations

7. Under art. 2.2 of the Dispute Tribunal's Statute and art. 13.1 of the Rules of Procedure, the Tribunal may suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. The Dispute Tribunal can suspend the contested decision only if all three requirements have been met.

The parties' submissions

8. The Applicant's main contentions can be summarized as follows:

a. UNOPS "did not comply with its obligations" under the Staff Rules and "did not make good faith efforts to find available and suitable positions" for him as a permanent appointment holder even though such positions were available. The decision to terminate his permanent appointment is an act of retaliation against him for his activities as a staff representative on the UNOPS Staff Council.

b. After he received the termination notice on 31 October 2023, he "was initially hesitant to initiate litigation, hoping instead to explore alternatives that would avoid a formal legal process". He had also "assumed that [his] role as a staff representative might have afforded [him] some protection from this type of retaliation". He "repeatedly attempted to engage in informal

discussions to resolve the issues surrounding [his] termination", but these were ultimately unsuccessful in light of the Organization's "unwillingness to engage in meaningful negotiations".

c. His efforts to seek assistance from the OSLA in late December 2023 were complicated by the fact that this was during the "holiday period".

9. The Respondent's principal submissions are the following:

a. Since he "was not able to gather additional documentary evidence regarding this case by the deadline, [he] has restricted [his] submissions to the Applicant's failure to meet one of the three conditions required (that of urgency)".

b. By not coming to the Tribunal at the first available opportunity, the Applicant failed to discharge his burden of demonstrating that his case is of particular urgency and that he acted in a timely manner. After the Applicant received the written notice of termination, he waited for 60 days before filing the MER and then waited for another 19 days before submitting his application. In other words, "the Applicant waited 79 days in total before coming to the Tribunal".

c. The Applicant's assertion that the delay in submitting his MER and in filing his application were occasioned by his attempt to engage in good-faith negotiations should be rejected because "the Applicant has provided no evidence to indicate that such a course of action was warranted in the circumstances".

d. The claim that the delay in submitting the application was caused by OSLA "is of no avail to the Applicant because the evidence shows that such a delay ceased on 29 December 2023" when the Applicant submitted his MER and shared a draft of his application for suspension of action pending

management evaluation. There is no justification for the "19-day delay" in filing the application.

Urgency

10. Urgency is relative and each case will turn on its own facts, given the exceptional and extraordinary nature of such relief. If an applicant seeks the Tribunal's assistance on an urgent basis, she or he must come to the Tribunal at the first available opportunity, taking the particular circumstances of her or his case into account (*Evangelista* UNDT/2011/212). The onus is on the applicant to demonstrate the particular urgency of the case and the timeliness of her or his actions. The requirement of particular urgency will not be satisfied if the urgency was created or caused by the applicant (*Villamoran* UNDT/2011/126; *Dougherty* UNDT/2011/133; *Jitsamruay* UNDT/2011/206).

11. Upon review of the submissions, the Tribunal finds that the Applicant has failed to demonstrate that any urgency of this case was not self-inflicted. The Applicant states that after he received the written notice of termination on 31 October 2023, he attempted to explore alternative means of obtaining the reversal of the termination decision without resorting to litigation. However, this does not justify his 60-day delay in submitting the MER or the additional 19 days it took him to file the present application, particularly since he also asserts that the Organization proved unwilling to engage in meaningful negotiations with him.

12. Similarly, the Tribunal is not persuaded that the delay can be attributed to any difficulty in obtaining legal assistance from OSLA during the holiday period. The evidence before the Tribunal shows that Counsel from OSLA assisted the Applicant to prepare and file a timely MER on 29 December 2023 together with an advance copy of the application for suspension of action. The Applicant has not provided any reasonable explanation as to why it took him a further 19 days to file the application.

13. The Tribunal notes that an application for suspension of action requires only a *prima facie* review by the Tribunal. Therefore, as stated above, an applicant must

come to the Tribunal at the first possible opportunity to seek the interim preservation of his or her rights to enable him or her to prepare a fully reasoned submission on the merits.

14. The Applicant in this case has failed to provide any reason why he took more than two months to submit the present application and the argument that he was "initially hesitant to initiate litigation" is unpersuasive. By the Applicant's own admission, the party with whom he was attempting to discuss was unwilling to engage in meaningful negotiations. Even when the Applicant finally decided to file the MER after waiting for about 60 days, he still waited for another 19 days to file the present application before the Tribunal.

15. Therefore, the Tribunal considers that, in this case, the urgency was self-created.

Prima facie *unlawfulness and irreparable harm*

16. The Tribunal is concerned by the Respondent's claim that he "was not able to gather additional documentary evidence regarding this case by the deadline" and by his failure to address any of the substantive issues raised by the Applicant, including regarding the lawfulness of the contested decision and the allegation of retaliation. All the relevant documents that informed the contested decision in the first place are in the Respondent's possession and should normally be readily available when required. Moreover, the Respondent was already put on notice, as early as 29 December 2023 when the Applicant shared an advance copy of the application, that such documents could soon be required. Therefore, the Tribunal finds the Respondent's explanations unacceptable.

17. Nevertheless, as the Applicant has not satisfied the requirement of urgency, the application fails and there is no need to examine the conditions of *prima facie* unlawfulness and irreparable harm.

In light of the above,

IT IS ORDERED THAT:

18. The application for suspension of action is rejected.

(Signed)

Judge Joelle Adda
Dated this 24th day of January 2024

Entered in the Register on this 24th day of January 2024

(Signed)

Isaac Endeley, Registrar, New York